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FEDERAL UNION COMMITTEE.

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CONSIDERATIONS

ON A SCHEME OF A

FEDERAL GOVERNMENT FOR
THE UNITED KINGDOM.

BY

G. R. BENSON.

London :

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PREFACE.

THIS Memorandum is put forward mainly for the purpose of discussion. It states the difficulties involved in the establishment of a Federal Government for the United Kingdom (using the word "Federal" in a somewhat loose sense), and makes suggestions as to how they should be solved. Though it is the result of much discussion amongst the undersigned members of the Committee, and though its broad outlines have the general approval of all who have signed the Statement of Objects, the Committee wish it to be clearly understood that they do not hold themselves unconditionally committed to the scheme suggested in all its details. Further discussion may reveal defects and suggest amendments.

Signed on behalf of the Committee,

G. R. BENSON.

T. A. BRASSEY.

J. A. MURRAY MACDONALD.

H. de R. WALKER.

All communications to be addressed—

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THE FEDERAL UNION COMMITTEE.

STATEMENT OF OBJECTS.

The Committee has been formed to advocate :

A.—Legislative and Administrative devolution applicable to the several countries of the United Kingdom ; and

B.—The ultimate Federation of the Empire for common ends.

REASONS.

A.—(1.) The injury to the State due to the overwhelming pressure of business in Parliament has become too patent to be ignored or denied. This pressure arises in part from the growing prominence of Imperial questions, which, while admittedly not receiving adequate attention themselves, nevertheless absorb the energies of Parliament and the Government to such an extent as to throw questions of domestic and social reform into the background ; in part also from the competitive claims of England, Wales, Ireland, and Scotland to secure a portion of the time of Parliament adequate to a reasonable consideration of their several interests.

(2.) There are many subjects which, for historic or economic reasons, cannot be dealt with on the same lines for each country.

Thus, during the last ten years, the number of statutes passed was 626 ; excluding from these annual and recurrent Acts and Acts affecting only the Colonies, the remainder, 529, consists of 341 Acts which apply exclusively to one (or in a few cases to two) of the three kingdoms, and only 188 which affect the United Kingdom as a whole.

(3.) Each country is compelled at times to obey laws, exclusively affecting its own interests, which would be summarily rejected by the majority of its own representatives. This is the almost normal condition of laws affecting Ireland. It is not infrequent in the case of Scotland. And even England, in spite of her overwhelming preponderance of representation, may be compelled to submit to laws which are not in accordance with the wishes of the majority of her representatives.

These evils can be cured only by a bold scheme of devolution. But a scheme of this character, involving the separation of the affairs of the several parts of the United Kingdom from the affairs of the Empire as a whole, is also absolutely essential if the second of the two objects of the Committee is ever to become an accomplished fact.

B.—(1.) This object, the Federation of the Empire, is justified by the general sentiment in its favour. Without this sentiment any attempt to complete and perfect the constitutional structure of the Empire would be visionary if not impossible. With it, the task becomes one with which statesmen can deal.

(2.) The Mother Country begins to feel that the burden of defending the Empire must one day become too heavy for her to bear alone ; while the Colonies on their side are beginning to realise that their increasing resources make it unfair that she should be asked to bear that burden without assistance from them. But if their assistance is to be regular and sustained, they will properly lay it down as a preliminary condition that they shall

be called to our Councils. Till this call is given and accepted the constitutional structure of the Empire will remain imperfect and incomplete.

The Committee desires the co-operation of all who will accept the following propositions :

(1) That legislative and administrative devolution, applicable to the several countries of the United Kingdom, is urgently necessary on both National and Imperial grounds.

(2) That it is desirable ultimately to create a Federal Union of the Empire for common ends.

(Signed)

W. RYLAND D. ADKINS.

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FREDERIC BOLTON.

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H. de R. WALKER.

RICHD. WHITEING.

DOUGLAS YOUNG.

FREDERICK YOUNG.

CONSIDERATIONS

ON A SCHEME OF

A FEDERAL GOVERNMENT FOR THE UNITED KINGDOM.

1.—INTRODUCTORY.

The object of this Memorandum is to consider in some detail how the policy of devolution on a large scale, or of what we may call federal union within the United Kingdom, could best be carried out.

The reasons for the policy are not here discussed, and agreement is assumed as to two principles which underlie the following scheme :—

(a) That the system of devolution required should be based upon the distinction of the several countries or nations which are combined in the United Kingdom ;

(b) That it should aim at relieving the Imperial Parliament and Government, as far as possible, of domestic business, while reserving to the sole control of that Parliament purely Imperial matters and certain matters concerning the United Kingdom which can only be conveniently dealt with for the United Kingdom as a whole.

2.—THE PORTIONS OF THE UNITED KINGDOM CONCERNED.

The divisions of the United Kingdom which must here be recognised are England, Wales, Scotland, and Ireland. It is true

that Wales does not stand in the same relation to England as do Scotland and Ireland; for, while having many peculiar political issues of its own, it is not appreciably distinct from England in laws or administration. But it seems probable that the Welsh would desire Wales to be dealt with on the same general lines as Scotland and Ireland, and at the same time; and the question is one for them to determine.

It will be convenient for the present, in speaking of the legislative and administrative authorities which it is here urged should be set up in these four countries, to distinguish them from the Imperial Parliament and Government by the term "National."

3.—THE SUPREMACY OF THE IMPERIAL AUTHORITY.

The Imperial Parliament, whatever powers it might bestow upon the National Legislatures, would still retain its supreme authority, and the Crown, or its representatives in the several countries, would have the right of refusing assent to measures of these Legislatures upon the advice of, or under instructions from, the Imperial Ministry—a right which is now possessed, and sometimes exercised, by the representatives of the Crown in the Colonies. To this extent the National Legislatures would be "subordinate"; and they would thus be unlike the State Legislatures in any federation strictly so-called.

The supremacy of the Imperial authority would not be any check (except in some extraordinary emergency) on misgovernment by the National authorities within their own sphere. Its significance is that, if ever occasion arose when Imperial interests were involved in some matter which was *prima facie* domestic, and within the province of the National authorities, the Imperial authority would not be impeded by any legal shackles in dealing with that matter, whether by legislative or by administrative action, as freely as Imperial interests required.

4.—THE FORM OF THE GRANT OF POWERS TO THE NATIONAL LEGISLATURES.

Should the subjects which are to be reserved for the control of the Imperial authorities be specifically enumerated in what we may call the Act of Federation, and the unspecified residue of legislative powers be given to the National Legislatures? Or should only certain specified subjects be assigned to these latter, and the whole residue of legislative powers be reserved to the Imperial Parliament alone?

The argument for the first of these alternatives is that the Imperial matters which should certainly be reserved are easily specified; while the domestic matters with which the National Legislatures ought to deal would be extremely difficult to enumerate with such completeness as to prevent doubt and consequent friction. The argument for the second alternative is that, in spite of the supreme and unlimited authority in all matters which the Imperial Parliament must necessarily retain, it is desirable as far as possible to restrict the authority of the National Legislatures to matters in which it is fairly certain that the Imperial Parliament need never intervene. The fact, however, that the Imperial Parliament would retain supreme authority seems to take away any necessity for the second of these two courses. It is submitted, therefore, that, as in the two Home Rule Bills, the first alternative should be adopted.

5.—THE DISTRIBUTION OF POWERS BETWEEN THE IMPERIAL PARLIAMENT AND THE NATIONAL LEGISLATURES.

What then are the main powers which should be reserved to the Imperial Parliament, and what are those which the National Legislatures should possess?

Clause 3 of the Home Rule Bill of 1893, as passed by the House of Commons, reserved for the sole control of the Imperial Parliament:—

(a) The succession to the Crown ; the control of the Navy and Army and of all armed force whatever ; relations with foreign countries and with British Colonies and Dependencies, including trade relations, and certain matters of law, such as treason and alienage, incidental to these Imperial matters.

(b) Maritime matters generally, whether partaking rather of an Imperial or of a domestic character.

(c) Certain matters more purely domestic, of which currency, weights and measures, trade marks, patents, and copyright are the chief.

This Clause does not deal with financial or with judicial matters, or with the special question of Irish land. The two latter are separately treated later ; and with regard to finance (which is treated in a separate memorandum) it is only necessary here to say that the National Legislatures should have no power of imposing Customs duties, and should probably have no control of the Post Office ; while the question of Excise is one which is not very easily determined. Subject to these exceptions, the Clause appears to reserve everything which we should regard as a distinctly Imperial concern. But the examples of existing federations may suggest the question whether a number of other domestic matters might not be reserved as suitable for uniform treatment in the whole United Kingdom. Of these a large class, of which marriage law and bankruptcy are examples, could not well be reserved, owing to existing differences of law or of administration between the three kingdoms which make uniformity in any case unattainable. Another large class, of which factory law is a leading example, is capable of uniform treatment for the whole United Kingdom, but consists of matters of popular

interest, on which progressive legislation is required. Of such matters the Imperial Parliament should be relieved, and in such matters the want of an effective domestic Legislature is felt.

Thus it appears that the above-named Clause may be taken substantially as a proper enumeration of the matters which should be reserved.

6.—DIFFERENCES IN THE POSITION OF THE SEVERAL COUNTRIES.

The Clause above referred to was drawn for the case of Ireland. There is, however, no serious difference between the position of Ireland and that of the other portions of the United Kingdom. The Act of Federation would, of course, have to provide for the transfer to Scotch authorities of those functions of domestic administration which have not already been transferred from English departments by the Secretary for Scotland Acts (the principal functions, not already so transferred, being the supervision of factories, mines and railways). It would have also to provide for the creation of central administrative departments for Wales. But the fact that Scotland, for a very few purposes, and Wales, for nearly all, are now under the same administrative system as England, does not point to any greater obstacle in the way of a separate treatment of their domestic affairs than exists in the case of Ireland. The fact of a land frontier between these countries and England only affects the question in very few matters, of which the suppression of cattle disease and some matters connected with railways are instances. These are neither numerous enough nor grave enough to require that any powers, which in Ireland were given to the National authority, should in Great Britain be reserved for the single Imperial authority. They could be dealt with effectively by concerted action, such as would certainly take place, between the National authorities of England, Wales, and Scotland.

7.—TEMPORARY RESERVATIONS.

Temporary reservations for a transitional period might be required. Only one of these need here be mentioned. The Irish land question may require the further use of Imperial credit, and in any case the responsibility for its solution could hardly be imposed on a newly-created Irish Legislature. Unless, therefore, the Imperial Parliament had previously adopted some thorough-going settlement of the question, it might be necessary to reserve it for a short period, say, of three years, within which the Imperial Parliament would stand pledged to pass legislation intended to remove the more acute difficulties. Such legislation the Imperial Parliament must in any case attempt before long.

8.—RESTRICTIONS ON UNJUST LEGISLATION.

Apart from the question of what subjects of legislation should be reserved, there is a further question—what restrictions, if any, should be imposed on the action of the National Legislatures within the limits of the powers allotted to them? Such restrictions should be as few as possible, and they should be precise, intelligible, and calculated to attain their object. The Home Rule Bills prohibited (*inter alia*) any form of new endowment (not disendowment) of religion, whether direct or indirect, and they prohibited legislation discriminating between different classes of H.M. subjects on grounds of creed, birth, or the like. It may be assumed that these two classes of restrictions would be embodied in the Act of Federation, but it is submitted that no others should be added.

9.—EXECUTIVE GOVERNMENT.

The policy of giving Legislatures to the several countries of the United Kingdom involves the creation of ministries to discharge the domestic functions of the central executive in each of these countries. It is unnecessary to discuss what legislative

enactments, if any, would be necessary for constituting these, or to discuss the transfers of powers from the Home Office, Board of Trade, and other departments which would be required. But one point in regard to the Executive must be noticed. There must exist an officer to act as an organ of communication between the Imperial authority and the National authorities, to exercise, when necessary, what may be called the Imperial veto, and to act for the Crown in the formation of a Government to carry on the National business. The Lord Lieutenant would discharge these functions for Ireland, and there would be required similar Lieutenants or Commissioners for England, Wales, and Scotland, though there is no necessity that they should be surrounded with the state of a viceroy. These officers, including the Lord Lieutenant or other like officer of Ireland, should not be members of the Imperial Government of the day. Their position should be similar to that of Colonial Governors. They should be appointed for fixed terms of office, and they should have power, subject to instructions from the Imperial Government, of giving, refusing, or reserving assent to Bills, or returning them with suggestions for amendment. Should no such officers be appointed, some at least of the functions referred to would have to be exercised by a member of the Imperial Government resident in London, who could not possess the necessary special knowledge for their proper exercise. Moreover, there would be greater risk of friction and of direct conflict between the Imperial and the National authority did no such buffer exist.

10.—THE JUDICATURE.

England, Scotland, and Ireland have now their own systems of judicature, consisting of what may be called local Courts, all subject to a single supreme Court of Appeal, which in all probability will be merged before long in the Supreme Court of Appeal for the Empire. It is submitted that the local judicature should be appointed by the Governments of the several countries, subject

to the safeguard that judges of the superior local Courts should not be removable except upon addresses from each house (if more than one) of the Legislature of their own country. The Imperial Court of Appeal would, of course, continue to be appointed by the Imperial Government.

Owing to the existence of reservations from, and restrictions upon, the powers of the National Legislatures, the question of the validity of enactments passed by those Legislatures would occasionally arise, and it would be the duty of every Court, local or Imperial, to disregard such enactments if and so far as they were *ultra vires* (though, of course, contrary to what is the case in strict federations, the validity of an Act of the Imperial Parliament could never be called in question). Now, it might be inconvenient that the validity of an enactment by a National Legislature should remain in question till the matter eventually arose in a private lawsuit (as happens in the United States), and it would even be desirable that such a question should be determined before the enactment had received the Royal assent, or had even passed through the National Legislature. Therefore it would probably be well that the Imperial Government, and perhaps also the National Governments, should be enabled to submit to the Imperial Court of Appeal the question of the validity, under the Act of Federation, of any enactment passed by, or proposed to, a National Legislature; and perhaps that resort to this Court should, in certain classes of cases, be made easier than now. If this were provided, it would be an open question whether there should be in each country special tribunals (such as exist in the United States side by side with the State Courts) to deal with questions affecting the Imperial revenue, or the validity of a local enactment, or otherwise involving an Imperial interest, or whether (as is at present the case in Australia) legal questions of federal interest should be left for decision (in the first instance) by the ordinary local Courts.

Wales has, of course, no separate judiciary at present. This gives rise to what would probably prove the only very perplexing

question of detail in regard to Wales. It is obvious, however, that the solution of this difficulty would not be a matter of first-rate political importance, but would be chiefly interesting to Welsh barristers.

11.—NUMBERS OF THE IMPERIAL HOUSE OF COMMONS.

It is submitted that it would add to the efficiency of the Imperial Parliament, and decrease the difficulty of finding suitable candidates both for Parliament and for the Legislatures of the several countries, if the Act of Federation greatly lessened the number of members of the House of Commons.

12.—ELIGIBILITY FOR MORE THAN ONE LEGISLATURE.

Whether the same person should be allowed to serve in the Imperial Parliament and also in a National Legislature is a question which may be left open by the Act of Federation. It is submitted that the National Legislatures should be free to legislate on this subject if they choose; though it would probably conduce to efficiency in the conduct of both National and Imperial business if the National Legislatures followed the example of the Colonial Legislatures in Australia, and prohibited a member of the National Legislature from sitting in the Imperial Parliament.

13.—SECOND CHAMBERS.

The question whether the Legislatures of the several countries should have one chamber or two may at the present stage remain an open one. To devise a satisfactory form of second chamber (if it should be decided to be necessary) is a problem of the greatest difficulty.

14.—FRANCHISE LAW, &c.

In regard to alterations in the franchise, and in other matters relating to elections, it is submitted that, so far as these concern the election of the Imperial Parliament, they should be reserved for the Imperial Parliament, and that so far as they concern the election of the Legislatures of the several countries, they should be within the power of those Legislatures.

15.—FINANCE.

The financial question is, except perhaps the question of Irish land, the most difficult which we have to consider. There is no doubt that a solution can be found, free from any such grave objection as could weigh against the general advantages of a Federal scheme. But the financial problem is complicated, and several alternative solutions present themselves. As the subject can only be dealt with at length, it is reserved for a separate memorandum.



